BAIL SLIP

The Accused/Appellant Devaraj, was directed to be released on bail as per order of this Court dated 19.10.2001 and made in CR.MP. No. 7472 of 2001 in Crl.Appeal.No. 1002 of 2001 on the file of the Court in Sessions Case No 371 of 2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1002 of 2001

Devaraj .. Appellant/Accused

Vs.

The State rep. by
The Deputy Superintendent of Police,
Tiruppur Rural Police Station,
Tiruppur.
(Cr.No.595/1997) .. Respondent/Complainant

Prayer:- This appeal has been preferred against the judgment dated 05.10.2001 made in S.C.No.371 of 2000 on the file of the Principal Sessions Judge-cum-Special Judge, Coimbatore.

For Appellant :Mr.M.Shankar
for Mr.P.Venkatesubramaniam

For Respondent :Mr.V.R.Balasubramaiam
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.371 of 2000 on the file of the Principal Sessions Judge-cum-Special Judge, Coimbatore. The accused faces charges under Section 3(1)(x) & 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act, 1989 and also under Section 323 IPC.

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2.The learned Sessions Judge, on appearance of the accused on summons, had furnished copies to the accused under Section 207 of Cr.P.C., and thereafter framed charges under Section 3(1)(x) and 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act, and when questioned the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.10 were examined Ex.P.1 to Ex.P.7 were exhibited. P.W.1 is the victim girl. According to her, she belongs to 'Mathari' caste, a schedule caste. The accused is running a tea shop in her village and when she was crossing the said tea shop of the accused on the date of occurrence along with her mother the accused came out of his tea shop and demanded the balance of Rs.7/-. She requested time till Sunday to wipe of the balance of Rs.7 being the due in the transaction, but the accused abused her by her caste ஙசக்கலிக் கண்டாரோழி' and also slapped her and hold her tuft gave blows on her back andalso assaulted her 5 or 6 times with his cheppal and dragged her on the ground and that one Shanmugam & Murugan interfered and pacified him. She had complained about the incident to her husband, who returned from his work spot at about 7.00 pm on the same day to took her to the police station where she preferred Ex.P.1-complaint and with a police memo she was referred to government hospital for treatment, where she was taking treatment as an inpatient for one week.

3.P.W.2 & P.W.3 have turned hostile.

4.P.W.4 is the mother of P.W.1. She has corroborated the evidence of P.W.1 to the effect that at the time of occurrence the accused had abused P.W.1 by caste (rf;fypf; fz;lhnuhHp) and also assaulted her with hands.

5.P.W.5 is the witness in Ex.P.1-complaint, who is none other than the husband of P.W.1.

6.P.W.6 is the then head quarters Deputy Tahsildar of Tirupur, Who had issued Ex.P.3, community certificate to P.W.1 certifying that she belongs to 'mathari' caste. He has also issued Ex.P.2-community certificate to the accused stating that he belongs to Hindu 'Uppara' community, a backward class.

7.P.W.9 is the then Sub-Inspector of Tirupur Rural Police Station. On the basis of Ex.P.1-complaint P.W.9 has registered the case under Tirupur Rural Police Station Cr.No.595 of 1997 under Section 323 & 354 IPC and under Section 3(1)(x) & 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act. Ex.P.5 is the FIR.

8.P.W.10 is the Investigating Officer, who had visited the place of occurrence on 2.10.1997 and prepared Ex.P.6-observation mahazar and also had drawn a rough sketch Ex.P.7. He has arrested the accused on 3.10.1997 at about 11.30 hours. He has examined the witnesses and recorded their statement.

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9.P.W.7 is the doctor, who had examined P.W.1 on 26.9.2007 and issued Ex.P.4 copy of the accident register. According to the doctor, P.W.1 had sustained i) an abrasion on the right palm measuring ½ x ½ cms, ii) a small abrasion on the left forearm iii) a contusion measruing 5 x 5 cm on the left thigh. The doctor has opined that the above said injuries are simple in nature.

10.P.W.8 would depose that on 26.9.1997 at about 3.00 am P.W.1 came to the police station along with her husband P.W.5 and preferred Ex.P.1-complaint and after registering the FIR, he had sent the victim to the government hospital Tirupur for treatment. After completing the formalities P.W.10 has filed the charge sheet against the accused on 21.1.1998.

11.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he would deny his complicity with the crime. He has not let in any evidence by way of defence. The learned trial Judge after giving due consideration to the oral and documentary evidence let in by the prosecution, has come to the conclusion that the charges levelled against the accused have been proved against the accused beyond any reasonable doubt and accordingly convicted the accused under Section 3(1)(x) & 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act and accordingly convicted and sentenced the accused to undergo 6 months RI and a fine of Rs.250/- under each of the above provisions of law and also convicted the accused under Section 323 IPC and sentenced him to pay a fine of Rs.250/- with default sentence, which necessitated the accused to prefer this appeal.

12. Heard Mr.M.Shankar learned counsel for the appellant and Mr.V.R.Balasubramaiam learned Additional Public Prosecutor and considered their submissions.

13.Now the point for determination in this appeal is whether the findings of the learned trial Judge in S.C.No.371 of 2000 on the file of the Principal Sessions Judge-cum-Special Judge, Coimbatore, is liable to the set aside for the reasons stated in the memorandum of appeal?

14.The Point:- 14(a) The learned counsel appearing for the appellant Mr.M.Shankar would focus the attention of this court to the discrepancies found in the complaint Ex.P.1 and the evidence of P.W.1. In Ex.P.1-complaint the complainant P.W.1 would state that at the time of occurrence the accused had abused her by caste (rf;fypf; fz;lhnuhH) and slapped her and also kicked her on the chest and dragged her on the ground holding her tuft. But before the Court as P.W.1 she has stated that the accused at the time of occurrence had abused her by caste and also slapped her and assaulted her 5 or 6 times with cheppal and kicked her 5 or 6 time. This part of the evidence was corroborated by P.W.4, mother of P.W.1. P.W.7, the doctor, who examined P.W.1 on 26.9.1997, had issued Ex.P.4, copy of

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the accident register. The third injury found in Ex.P.4 is a contusion on the left thigh measuring 5 x 5 cms. Neither in Ex.P.1-complaint nor in her deposition P.W.1 has stated that at the time of occurrence the accused had assaulted her on her left thigh. It is the case of P.W.1 that at time of occurrence the accused slapped her and also gave blows on her back and kicked on the chest. But the doctor has not noted any injury on P.W.1 neither on the chest nor on the cheek. It is further pointed out by the learned counsel for the appellant Mr.M.Shankar that time has not been stated in Ex.P.4 to show that when P.W.1 was examined by P.w.7, the doctor, on 26.9.1997 and the crime number noted in Ex.P.4 is in different ink. Under such circumstances, I am of the view that the conviction and sentence of the trial Court under Section 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act and under Section 323 IPC cannot be sustained.

14(b) When we come to the remaining charge against the accused under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, in Ex.P.1-complaint itself the complainant has mentioned that at time of the occurrence the accused had abused her by caste (rf;fypf; fz;lhnuhH) and before the Court as P.W.1, the victim has deposed that at the time of occurrence the accused had abused her by caste. P.W.4 is an eye witness to the occurrence. P.W.4 the mother of P.W.1 also corroborated the evidence of P.W.1 to the effect that at the time of occurrence the accused had abused her by her caste. P.W.6 is the Head Quarter Deputy Tahsildar of Tirupur, who had issued Ex.P.3 community certificate to P.W.1 stating that she belongs to Hindu Mathari comminuty, a shedule caste, and that the accused Devaraj belongs to backward clause, Hindu Uppara. Ex.P.2 is the community certificate relating to the accused. Under such circumstances, as rightly held by the learned trial Judge an offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, has been attracted against the accused. I do not find any reason to interfere with the findings of the learned trial Judge as to the finding that the accused is guilty under Section 3(1)(x) of the SC/ST Act. Point is answered accordingly.

In fine, the appeal is partly allowed and the conviction and sentence of the trial court in S.C.No.371 of 2000 on the file of the Principal Sessions Judge-cum-Special Judge, Coimbatore, under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act and under Section 323 IPC are hereby set aside and the conviction and sentence of the trial Court under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, is confirmed. The accused is entitled to the fine of Rs.250/- each paid under Section 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act anunder Section 323 IPC. The fine imposed under Section 3(1)(x) of the SC/ST

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(Prevention of Atrocities) Act will sustain. The trial judge is directed to secure the accused and send to prison to undergo unexpended portion of the sentence.

Ssv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate No.II,
Tiruppur.

2.-do-Through The Chief Judicial Magistrate,
Coimbatore District.

3.The Principal Sessions Judge
-cum- Special Judge, Coimbatore.

4.The Public Prosecutor, Madras High,
Madras.

5.The Deputy Superintendent of Police,
Tiruppur Rural Police Station,
Tiruppur.

ASM (co)
sg 9/8/07

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